

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JANICE O. GOODMAN,

Plaintiff,

v.

**JOHN E. POTTER, POSTMASTER
GENERAL, UNITED STATES POSTAL
SERVICE,**

Defendant.

Civil Action No. 01-1801 (RMC)

MEMORANDUM OPINION

Janice O. Goodman worked as a mail carrier for the United States Postal Service until November 20, 1999, when she was given a Notice of Removal for “unacceptable conduct.” She grieved her removal and her union, the National Association of Letter Carriers (NALC), represented her through the grievance process and before an arbitrator. After a full hearing, the arbitrator denied the grievance and sustained the discharge. Ms. Goodman filed suit to reverse the arbitral award.

The United States Postal Service (the "Postal Service") has filed a motion to dismiss or in the alternative for summary judgment. In deciding this motion, the Court considers matters outside the pleadings and therefore will treat the motion as one for summary judgment. *See* FED. R. CIV. P. 12(b). Based on the pleadings, motions, and the statements of material facts, there is no genuine issue of material fact regarding Ms. Goodman's lack of standing to bring this suit. Therefore the Court will grant the Postal Service's motion for summary judgment.

FACTS¹

The Postal Service and NALC were parties to a 1998-2001 collective bargaining agreement at the time of Ms. Goodman's discharge. Under the terms of that document, employees could be discharged for just cause. Any grievance over a discharge was subject to final and binding arbitration by an impartial arbitrator.

Ms. Goodman was issued a Notice of Removal on November 20, 1999, by which the Postal Service informed her that she would be discharged within thirty days for unacceptable conduct, *i.e.*, accepting payment of workers' compensation benefits after her return to work from a work-related injury. The amount in question was over \$10,000 and represented benefit checks for the months of April through September 1999; Ms. Goodman had returned to work in March 1999. Ms. Goodman was accused of violating Section 666.2 of the Employee and Labor Relations Manual of the Postal Service which provides in relevant part:

Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of its employees, it does require that postal personnel be honest, reliable, trustworthy, courteous, and of good character and reputation.

Defendant's Stmt. of Material Facts Not in Dispute ¶ 5. Ms. Goodman grieved her discharge and NALC represented her through the steps of the grievance process and before Arbitrator Mark A. Rosen. On July 21, 2002, the Arbitrator decided as follows:

¹ The Postal Service filed a Statement of Material Facts Not in Dispute as to which Ms. Goodman has made no objection. Ms. Goodman filed her own Petitioner's Statement of Material Facts As To Which There Is No Genuine Dispute and the Postal Service has made no objection. The Court will base its facts on these documents. *See* LcvR 7.1(h).

The grievance is denied. The removal was for just cause. The Grievant improperly accepted and cashed OWCP [Office of Workers Compensation Program] checks with the knowledge that she had no reasonable right to do so, for the reasons discussed herein.

Defendant's Stmt. of Material Facts Not in Dispute ¶ 11. The Arbitrator fully explicated his reasoning. In essence, although he found that the Postal Service was responsible for notifying OWCP of a claimant's return to work and shared fault for the fact that checks continued to issue, he faulted Ms. Goodman alone for cashing and spending checks for workers' compensation benefits when she knew or should have known that she had no continuing entitlement to benefits upon her return to work.²

Ms. Goodman instituted this suit in August 2001, predicated jurisdiction on the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.* She argues that the Arbitrator prejudiced her rights by failing to allow the introduction of pertinent evidence, failing to provide appropriate notice as to materials that would be admitted into evidence, unduly relying upon hearsay evidence, failing to establish a factual predicate to find employee misconduct, failing to consider evidence bearing on alternate remedies rather than discharge, and failing to establish any nexus between the alleged misconduct and the efficiency of the Postal Service. In addition, Ms. Goodman argues that the provision at Section 666.2 of the Employee and Labor Relations Manual, cited above, is

² Ms. Goodman points out that this award differed sharply from a March 23, 2000, decision of an Appeals Examiner for the D.C. Office of Employment Compensation. The Appeals Examiner determined that Ms. Goodman was entitled to receive unemployment compensation benefits after her discharge because the Postal Service failed to rebut Ms. Goodman's assertion that she believed the workers' compensation payments in April through September 1999 were for a prior claim and not related to the injury from which she had returned to work in March 1999. Thus, there was a failure of proof. In contrast, the arbitration involved a full evidentiary hearing with both sides represented and able to question and cross examine witnesses. In any event, the decision of the Appeals Examiner is not relevant to this Court's decision on Ms. Goodman's standing to appeal the arbitrator's award.

unconstitutionally broad and denies due process in affording notice as to which activities are proscribed.

LEGAL STANDARD FOR SUMMARY JUDGMENT

As the party moving for summary judgment, the Postal Service must demonstrate that the facts revealed in affidavits, depositions, answers to interrogatories or admissions, and the pleadings, when viewed in a light most favorable to Ms. Goodman, show that there are no genuine issues of material fact and that the Postal Service is entitled to judgment as a matter of law. FED R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 US 317, 322 (1986). In addition, the court must draw all reasonable inferences in favor of Ms. Goodman. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 255 (1986). A party opposing summary judgment “may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Id.* at 248.

ANALYSIS

The first question in any suit is whether the court has jurisdiction to consider it. Ms. Goodman predicated her complaint on the FAA. The Postal Service properly notes that the FAA does not apply to labor arbitration cases. *United Paperworkers Int’l v. Misco*, 484 U.S. 29, 40 n.9 (1987). In her opposition to the motion to dismiss, Ms. Goodman concedes that the FAA does not apply but she suggests that the federal common law that applies to collective bargaining agreements can be a basis for jurisdiction here.

This argument misperceives the nature of the “federal common law” to which it refers. Section 301 of the Labor Management Relations Act of 1947, 29 U.S. C. § 185, provides a statutory basis for suits to enforce private-sector collective bargaining agreements. Over the course of the

years since 1947, the federal courts have developed a body of “common law” to govern such suits. *See Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957). While Section 301 of the LMRA does not apply to the Postal Service, 39 U.S.C. § 1208(b) has been held to be Section 301's analogue. *See Nat'l Ass'n of Letter Carriers v. U.S. Postal Serv.*, 590 F.2d 1171, 1174 (D.C. Cir. 1978). Were this a suit to enforce the collective bargaining agreement between NALC and the Postal Service under § 1208(b), the “federal common law” that pertains to interpretation and enforcement of such contracts would be applicable.

Ms. Goodman, however, is not attempting to enforce the contract and she does not allege a breach. Her suit attempts a collateral attack on an arbitration award derived from the processes agreed to between NALC and the Postal Service to resolve all grievances. The “federal common law” which aids contract enforcement is not a stand-alone basis for jurisdiction.

Ms. Goodman argues alternatively that she is an intended beneficiary of the collective bargaining agreement between the Postal Service and NALC and therefore properly before this Court.³ Assuming that Ms. Goodman was an intended beneficiary of the collective bargaining agreement, she still is not claiming a breach or a failure by any party to that agreement to fulfill a duty to her. Her only disagreement is with the arbitrator. The principal of intended beneficiaries does not give jurisdiction to this Court.

A more serious flaw undermines Ms. Goodman's complaint: she has not alleged any failing or wrongdoing on the part of her union. A union is the exclusive bargaining representative for all

³The RESTATEMENT (SECOND) OF CONTRACTS § 302 explains, in relevant part, “Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties”

employees in the bargaining unit and it is granted a wide range of reasonableness in carrying out its duties. *See Vaca v. Sipes*, 386 U.S. 171, 191 (1967) ("A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.") (citations omitted). This includes decisions on handling grievances and arbitration. *Id.* at 191 ("Though we accept the proposition that a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration"). As a party signatory to a collective bargaining agreement, a union could sue to set aside an arbitration award when the arbitrator has been "guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy." 9 U.S.C. §10(c); *Misco*, 484 U.S. at 40 & n.9. These are the kinds of allegations contained in Ms. Goodman's complaint.⁴ But individual union members lack standing to sue to vacate a binding arbitration award; an individual can sue only when the union has violated its duty to represent her in good faith and thereby destroyed the arbitration process. *See United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 61 (1981) ("an employee may go behind a final and binding award . . . only when he demonstrates that his union's breach of its duty seriously undermined the integrity of the arbitral process") (internal quotation omitted); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-71 (1975) ("To prevail against either the company or the Union, [employees] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating breach of duty by the Union.").

⁴ In order to present grounds for vacatur, the arbitrator's "procedural aberrations [must] rise to the level of affirmative misconduct." *Misco*, 484 U.S. at 41 n.10.

In this case, however, Ms. Goodman has not sued NALC and makes no allegation that the Union failed to represent her properly.⁵ She cannot escape the binding effect of the arbitrator's decision without alleging, and proving, that not only was the arbitrator wrong under the contract but also that the Union failed to represent her properly and thereby undermined the entire arbitral process. *See United Parcel Serv.*, 451 U.S. at 61-62; *Hines*, 424 U.S. at 570-71. Her complaint specifies no allegations against the Union, which is fatal to her standing here.

CONCLUSION

Because Ms. Goodman has failed to allege that the Union breached its duty of fair representation, she has no standing to attack the arbitrator's award. Accordingly, this Court has no jurisdiction over her complaint and the Postal Service's motion for summary judgment will be granted. A separate order will accompany this Memorandum Opinion.

ROSEMARY M. COLLYER
United States District Judge

Date: January ____, 2003

⁵ Six months is the statute of limitations for a suit claiming breach of a union's duty of fair representation. 29 U.S.C. § 160(b); *Trent v. Bulger*, 837 F.2d 657, 659 (4th Cir. 1988); *Abernathy v. U.S. Postal Serv.*, 740 F.2d 612, 616-17 (8th Cir. 1984). Ms. Goodman acknowledges that her Complaint does not name the Union as a party nor raise any claims against it. *See* Defendant's Stmt. of Material Facts Not in Dispute ¶ 13 and Plaintiff's Answer to Defendant's Stmt. of Material Facts ¶ 13. Even if Ms. Goodman had a complaint against NALC, it would be untimely as the arbitrator issued his award on July 21, 2001 and the relevant time period has long since expired.